NEW QUEBEC SECURITIES ACT

WORKING PAPER

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WORKING PAPER

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SECURITIES ACT

TITLE I

OBJECTS OF THE ACT

1. The objects of this Act are

(1) to promote efficiency in the securities market;

(2) to protect investors against unfair, improper or faudulent business practices;

(3) to regulate the information that must be disclosed to security holders and to the public on persons engaged in distribution of securities and on the securities issued by these persons;

(4) to define a framework for the professional activities of persons dealing in securities and associations of such persons;

(5) to promote healthy competition in the securities market.

(4) a real or personal surety if it is not granted to secure bonds or debentures;

(5) a security issued by a closed company in conformity with its constating instruments and by-laws;

(6) a security issued by a non-profit company provided that its distribution entails neither remuneration nor expenditure;

(7) a share in a savings and credit union including a share in a federation of savings and credit unions governed by the Savings and Credit Unions Act (R.S.Q., c. C-4) provided that the subscription to that share was neither solicited nor received by a remunerated salesman or canvasser and that the share was paid-up at the time of subscription;

(8) a common or preferred share in a cooperative association, including a share in a federation of cooperative associations governed by the Cooperative Associations Act (R.S.Q., c. A-24), provided that the subscription to the share was neither solicited nor received by a remunerated salesman or canvasser;

(9) a common or preferred share in a cooperative agricultural association, including a share in the Coopérative Fédérée du Québec governed by the Act respecting cooperative agricultural associations (R.S.Q., c. S-24) provided that the subscription to the share was neither solicited nor received by a remunerated salesman or canvasser;

(10) a share of an investment club where the following conditions are met:

(a) the club does not have over 50 members;

(b) the club does not issue debt securities;

(c) the club does not pay any remuneration to advisers or brokers, except normal brokerage fees;

(d) all of the club's members are required to make contributions in proportion to their shares for the financing of its operations;

(11) the shares of an unincorporated mutual fund administered by a trust company registered under the Trust Companies Act (R.S.Q., c. C-41) having either of the following characteristics:

(a) it consists of pooled funds from retirement savings plans, home ownership savings plans or other similar plans, registered under the Taxation Act (R.S.Q., c. I-3) or the Income Tax Act (Canada);

(b) it consists of unsolicited funds received from curators, trustees, testamentary executors or tutors which are commingled with the authorization of the depositor or his agent for the purpose of investment.

6. Notwithstanding section 5, the Commission may exercise in respect of the securities described in that section, all the powers provided under Title XII.

CHAPTER II

INTERPRETATION

7. In this Act, unless the context indicates otherwise

(1) "adviser" means any person who advises another person as to the subscription, purchase or sale of securities, or who manages portfolio securities under a mandate;

(2) "senior executive" means any person exercising, in law or in fact, the function of director, or of president, vice-president, secretary, treasurer, controller or general manager, or similar functions;

(3) "issuer" means any person who has outstanding securities, or issues or proposes to issue securities;

(4) "unincorporated mutual fund" means a fund consisting of sums commingled under a collective investment contract managed on behalf of holders by a company which, on demand, redeems the shares at their winding-up value;

(5) "material" means capable of influencing the conduct of a competent person placed in similar circumstances, and when used in relation to securities, taking into consideration that the value of securities may be affected or their quoted price influenced;

(6) "misrepresentation" means any misleading information on a material fact as well as any pure and simple omission of a material fact;

(7) "privileged information" means any information concerning a material fact not yet known to the public;

(8) "associate" where used to indicate a relationship with a person, means

(a) the company in which that person owns voting securities carrying more that ten per cent of all the issued voting securities;

(b) any partner of that person;

(c) any trust or estate in which that person has a beneficial interest or as to which that person serves as trustee or testamentary executor or in a similar capacity;

(d) the spouse of that person, his children, his relatives and his spouse's relatives, if they share his residence;

(9) "person" means any natural person, association civil partnership, government, or any artificial person whether private or public;

(10) "artificial person" means any group of persons having legal personality, including a commercial partnership;

(11) "distribution" means

(a) any endeavor engaged in by an issuer or his agent to obtain subscribers or purchasers for its securities;

(b) any endeavor engaged in by a subscriber or purchaser of securities to obtain a purchaser for securities he acquired under an exemption provided under sections 55 to 67;

(c) any endeavor engaged in to obtain, for the first time, a purchaser for the securities of a formerly closed company that have not previously been the subject of a prospectus;

(d) an issuer's giving as guarantee securities issued by him for that purpose;

(e) the acceptance of an unsolicited request for securities, provided that, had the request been solicited, paragraph a, b, c, or d would have applied;

(12) "mutual fund" means a company issuing shares which must, on demand of the holder, redeem them at their winding-up value;

(13) "closed company" means a company whose constating instruments prescribe restrictions to the free transfer of shares, prohibit any public invitation to subscribe to its securities and limit the number of its shareholders to 50, exclusive of the employees of the company;

(14) "voting security" means any security other that a debt security carrying a voting right either in all circumstances or under a circumstance that has occurred and is continuing.

8. The person holding securities entitling him to elect in all cases a majority of the directors of an artificial person has the control of that artificial person.

9. A controlled artificial person is the subsidiary of the artificial person controlling it.

10. Any artificial person and its subsidiary, or any two artificial persons controlled by the same person, are affiliates.

11. A person is deemed to be the owner of securities held by an artificial person affiliated with him.

TITLE III

REPORTING ISSUERS AND PERMANENT INFORMATION RECORD

12. An issuer that has made a distribution of its securities is subject to the disclosure requirements specified in Title V, and is called a "reporting issuer".

Every issuer is deemed to have made a distribution of its securities

(1) that was authorized by the Commission, at any time, from 1 May 1955 to the coming into force of this act, to make a distribution under a prospectus filed with the Commission;

(2) that has filed a securities exchange take-over bid circular with the Commission on or after 6 July 1973;

(3) that has filed a prospectus with the Commission and obtained a receipt therefor;

(4) that has filed a circular with the Commission in respect of a take-over bid by way of an exchange of securities;

(5) any of whose securities has been listed on a stock exchange in Québec at any time from the coming into force of this Act;

(6) whose existence is the result of an amalgamation to which one or more reporting issuers were a party;

(7) whose existence is the result of the continuance of an issuer contemplated in sub-paragraphs 1 to 6;

13. Upon the application of a reporting issuer that has fewer than fifteen security holders whose latest address as shown in the records of the reporting issuer is in Québec, the Commission may, subject to the terms and conditions it determines, revoke the issuer's status as a reporting issuer or release the issuer from all or part of the disclosure requirements.

14. The Commission shall keep a public register of reporting issuers.

15. Upon the application of a person wishing to avail himself of an exemption provided for in sections 68 to 73, the Commission shall issue a certificate which is proof of its content in respect of the standing of a reporting issuer.

16. No person who knows or reasonably ought to know that a reporting issuer is in default may adduce a certificate as proof in his defence.

17. To avail himself of section 30, a reporting issuer shall file a permanent information record with the Commission.

18. The form and content of the permanent information record are fixed by regulation.

    Every permanent information record must contain the material facts in respect of the reporting issuer's securities.

19. The reporting issuer shall file a new permanent information record within 90 days of the end of its financial year.

20. The content of the documents filed by a reporting issuer in accordance with Chapter I of Title V form an integral part of the permanent information record.

21. Every reporting issuer shall, on demand, send a copy of its permanent information record to holders of its securities or to any other persons. It may exact a fee, except from holder.

22. A reporting issuer that decides to cease filing a permanent information record shall so inform the Commission.

TITLE IV

DISTRIBUTION OF SECURITIES TO THE PUBLIC

CHAPTER I

DISTRIBUTION OF SECURITIES

DIVISION I

PROSPECTUS

23. Every person who intends to effect a distribution shall prepare a prospectus, file it with the Commission and obtain a receipt therefor.

24. Every artificial person having its head office in Québec shall, to distribute securities outside Québec, also prepare a prospectus, file it with the Commission and obtain a receipt therefor.

25. A prospectus must contain all the information required by regulation and all the material facts relating to the securities to be distributed.

26. The issue of a receipt is at the discretion of the Commission.

The Commission may subject the issue of a receipt to the fulfilment of an undertaking or to any other terms and conditions.

27. The Commission shall not issue a receipt if it is of the opinion that

(1) the prospectus does not conform with this Act or the regulations;

(2) the senior executives of the issuer do not appear to have the competence and integrity to establish the viability of the issuer's business operations;

(3) the issuer does not appear to have adequate financial resources to meet its commitments in the conduct of its business;

(4) to do so would be contrary to the best interests of investors.

28. Only the following documents may be used in the course of distribution:

(1) a prospectus for which a receipt has been issued;

(2) a document filed with the prospectus and mentioned therein;

(3) an advertisement not prohibited by regulation, provided that it conforms in content with the documents contemplated in paragraphs 1 and 2.

29. The document mentioned in paragraph 3 of section 28 must refer to the prospectus in the manner prescribed by regulation and give the conditions under which it is to be made available to the public.

30. A reporting issuer that for two years has satisfied the disclosure requirements established by this act or the equivalent requirements imposed by the preceding act may, in the cases defined by regulation, prepare a short form prospectus, provided that it has filed the permanent information record provided for in Title III.

The rules governing the prospectus apply, mutatis mutandis, to the short form prospectus.

DIVISION II

PRELIMINARY PROSPECTUS

31. A preliminary prospectus may be filed before the prospectus contemplated in section 23.

The preliminary prospectus must contain substantially the same information as the prospectus, except the price, the auditor's report and any other particular excepted by regulation.

The Commission shall issue a receipt upon the filing of a preliminary prospectus.

32. From the time a receipt for a preliminary prospectus is obtained, and until a receipt for the prospectus is obtained, it is permissible, notwithstanding sections 23 and 28,

(1) to forward to any person a preliminary prospectus;

(2) to circulate an advertisement not prohibited by regulation, provided it conforms in content with the preliminary prospectus;

(3) to solicit prospective subscribers or purchasers.

33. The document mentioned in paragraph 2 of section 32 must refer to the preliminary prospectus in the manner prescribed by regulation and give the conditions under which the preliminary prospectus is available to the public.

34. A broker distributing a security during the period contemplated in section 32 shall send a copy of the preliminary prospectus to every person who requests it.

35. The broker shall keep a record of the names and addresses of the persons to whom he sends the preliminary prospectus.

DIVISION III

AMENDEMENT OF PROSPECTUS

36. Where a material change occurs in respect of a security being distributed and is as yet unknown to the public, the prospectus must be amended as soon as practicable and in any event within ten days.

37. Where a change involves an addition to the number of securities to be distributed, an amendment must first be filed with the Commission and a receipt obtained therefor.

38. In the case of a preliminary prospectus, the filing of an amendment is required only for an adverse change occurring during the period contemplated in section 32.

    Furthermore, a copy of the amendment must be sent to every person whose name appears in the record provided for in section 35.

DIVISION IV

SENDING OF PROSPECTUS AND RIGHT OF RESCISSION

39. A broker who receives an order to purchase or subscribe a security offered in a distribution carried out in conformity with this chapter shall send or deliver to the applicant or his agent a copy of the prospectus, and any amendment thereto, not later than the second working day after the purchase.

However, a broker acting solely as agent for his client who receives no remuneration, even indirectly, from the issuer or the vendor is not bound by the first paragraph.

40. In the case of a concession contract or of a franchise, the candidate does not contract any obligation nor make any payment until ten days after the sending of the prospectus.

41. A person who subscribes or purchases securities offered for distribution by a broker may unilaterally rescind the contract by giving notice of his intention to the broker, by letter or telegram, within two days after receipt of the prospectus. The rescission is operative of right from receipt of the notice.

42. Section 41 has no effect if the subscriber or purchaser is himself a broker or if he disposes of the securities during the time for rescission.

43. The addressee is presumed to have received, in the ordinary course of mail, the copy of the prospectus or the notice of rescission mailed to him.

DIVISION V

DISTRIBUTION PROCEDURE

44. A distribution must be terminated within 12 months from the date of the receipt for the prospectus, or for the preliminary prospectus, where such is the case.

45. A distribution may be extended for a further 12 months if

(1) a pro forma prospectus prepared in the form prescribed by regulation is filed at least 30 days before the lapse of the term specified in section 44;

(2) a prospectus is filed within ten days from the lapse of the period;

(3) a receipt for the prospectus is obtained from the Commission within 20 days from the lapse of the period.

The distribution may be continued, notwithstanding section 44, until a receipt is obtained, provided that the time limits prescribed by this section are observed.

However, the additional year runs from the lapse of the first year.

46. The Commission may extend a time limit provided in section 45, subject to such terms and conditions as it may determine.

47. Unless the Commission has granted an extension under section 45, a person who purchases securities being distributed in contravention of a condition fixed by that section may rescind the purchase within ninety days of his first knowledge of the contravention.

48. In case of doubt whether a distribution has ceased or is in progress, the Commission shall decide.

No appeal lies from the decision.

49. The Commission may order that a distribution cease

(1) if the prospectus does not conform with this act or the regulations;

(2) if the amendment required by section 36 or 38 has not been made within the prescribed time;

(3) if the Commission considers it in the best interest of investors.

The distribution may not be resumed until the Commission has issued a receipt for the revised version of the prospectus, or for the amendment, as the case may be.

50. The Commission may require that the content of the order made under section 49 be communicated to all the persons to whom the prospectus has been sent.

51. Where a third person proposes to make a distribution of the securities of an issuer, the Commission may order the issuer to provide the documents and information necessary for the preparation of the prospectus.

52. Section 23 does not apply to a distribution effected in conformity with the requirements of the Commission through a stock exchange established in Québec.

A receipt must be obtained from the Commission for every document filed for approval with the stock exchange in view of the distribution. Such a document is deemed, mutatis mutandis, to be a prospectus for the purposes of sections 36, 39, 41, 42, 43, 49, 51 and of Title XI.

CHAPTER II

EXEMPTIONS

DIVISION I

EXEMPTIONS DUE TO THE NATURE OF THE SECURITIES

53. A prospectus is not required for distribution of the following securities:

(1) a debt security issued or guaranteed by the Government of Canada or the Government of a Canadian province;

(2) a debt security issued or guaranteed by a bank subject to the Bank Act (R.S.C., 1970, chapter B-1 and amendments) or to the Quebec Savings Banks Act (R.S.C., 1970, chapter B-4 and amendments);

(3) a debt security issued or guaranteed by a savings and credit union subject to the Savings and Credit Union Act (R.S.Q., c. C-4);

(4) a debt security issued or guaranteed by

(a) a municipal or school corporation;

(b) a hospital center;

(c) a university;

(d) a general and vocational college;

(e) a fabrique constituted under the Act respecting fabriques (R.S.Q., c. F-1);

(5) a negotiable instrument payable in one year or less and evidencing, if it is transferred to a natural person, a debt for a sum of 50 000 dollars or more.

54. The exemption provided for in paragraph 4 of section 53 presupposes one of the following conditions:

(1) the person concerned has the power to levy a tax on real estate located in a Canadian province;

(2) the person concerned may issue a loan only under the supervision of a department or body of the Government of Canada or of the government of a Canadian province.

DIVISION II

EXEMPTIONS DUE TO THE NATURE OF THE DISTRIBUTION

55. No prospectus is required where an unadvertised distribution of securities is made to a sophisticated purchaser.

56. Each of the following persons is a sophisticated purchaser to the extent that he subscribes to or purchases securities as principal and not with a view to a distribution:

(1) the Government of Canada or the government of a Canadian province;

(2) a bank governed by the Bank Act (R.S.C., 1970, chapter B-4 and amendments) or by the Quebec Savings Bank Act (R.S.C., 1970, chapter B-4 and amendments);

(3) the Caisse de dépôt et de placement du Québec;

(4) the Société de développement industriel du Québec;

(5) the Federal Business Development Bank;

(6) a federation or a regional union of savings and credit unions governed by the Savings and Credit Unions Act (R.S.Q., chapter C-4);

(7) a trust company registered under the Trust Companies Act (R.S.Q., chapter C-41); such a company is deemed to be acting as principal when it purchases securities for accounts fully managed by it;

(8) an insurance company licensed under the Act respecting insurance (R.S.Q., chapter A-32);

(9) a municipal or school corporation or a public agency or body governed by an act of the Government of Canada or the government of a Canadian province;

(10) a registered broker;

(11) a person designated in an order of the Commission, on such terms and conditions as it may determine.

57. A person who makes a distribution to a sophisticated purchaser shall, within ten days, file a notice of the transaction with the Commission in the form prescribed by regulation.

58. A person who has not previously made a distribution is exempt from preparing a prospectus when distributing securities to not more than 25 subscribers or purchasers, if all the following conditions are met:

(1) each person is acting as principal;

(2) each transaction is evidenced by a written contract containing the provisions prescribed by regulation;

(3) all the securities issued are distributed within six months;

(4) the distribution is made without advertisement;

(5) the promoter of the distribution, other than a registered broker, has not availed himself of this section within the previous twelve months.

Nor is a prospectus required for a transfer between original subscribers or purchasers.

59. No issuer may avail himself more than once of the exemption provided for in section 58.

60. An issuer that makes a distribution under the conditions prescribed in section 58 shall, before the distribution begins and within ten days of its completion, file a notice thereof with the Commission in the form prescribed by regulation.

61. An exchange of securities for the purpose of a merger or a reorganization of capital does not require the preparation of a prospectus if the Commission agrees thereto or does not raise any objection within 15 days of receiving the information required by regulation.

62. No prospectus is required for the distribution of gilt-edged securities or of non-voting debt securities not convertible into voting securities, provided that the total cost of subscription or purchase is at least 97 000 dollars.

In such a case, the person making the distribution shall give the notice provided for in section 57.

63. An issuer is exempt from preparing a prospectus

(1) for the distribution to holders of its securities, of a right to exchange, convert or subscribe its securities, and of the securities necessary for the exercise of that right;

(2) for the distribution of securities by means of a dividend re-investment plan;

(3) for the distribution of portfolio securities issued by a reporting issuer, to permit the exercise of a right to exchange, convert or subscribe previously granted by the issuer;

(4) for the distribution of securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment.

64. The exemptions provided for in section 63 apply only if the Commission agrees thereto or does not raise any objection within 15 days of receiving the information required by regulation.

65. A prospectus is not required for the distribution of a voting security where the number of holders of voting securities after the distribution is not greater than five, provided that there is no advertisement.

    Each undivided joint owner of one security is counted as one security holder.

66. No prospectus is required for the distribution of securities by way of a firm underwriting by a broker registered in Québec.

67. No prospectus is required where an issuer gives as collateral securities issued by him for that purpose.

DIVISION III

FINAL EXEMPTIONS

68. The expression "gilt-edged security" means a security contemplated in paragraph d, h or i of article 98lo of the Civil Code.

69. No prospectus is required for the sale of a gilt-edged security purchased at the time of a distribution made under an exemption provided for in section 55, 58 or 62 if the security is held at least six months from the date of purchase, provided that the security issuer is a reporting issuer and has complied with the resulting requirements for six months.

70. The exemption provided for in section 69 applies, on the same conditions, to securities issued or guaranted by a reporting issuer and listed for trading on a recognized stock exchange, if the security is held for at least twelve months.

71. The exemption provided for in section 69 also applies, in the same conditions, to any other security that is held for at least eighteen months.

72. No prospectus is required for the sale of securities purchased under an exemption provided for in section 61 if the issuer or one of the merged parties is a reporting issuer and has complied with the resulting requirements for twelve months.

73. No prospectus is required for the sale of securities purchased under an exemption provided for in section 63 if the issuer is a reporting issuer and has complied with the resulting requirements for more than twelve months.

74. The exemptions provided for in sections 69 to 73 apply only if no effort is made to prepare the market or to create a demand for the securities contemplated.

75. A prospectus is not required for a take-over bid by way of an exchange of securities made in conformity with Title VI.

TITLE V

DISCLOSURE REQUIREMENTS

CHAPTER I

CONTINUOUS DISCLOSURE BY REPORTING ISSUERS

76. Where a material change occurs in respect of a security of a reporting issuer and is not generally known, the issuer shall immediately prepare and issue a press release disclosing the substance of the change.

A copy of the press release must be filed immediately with the Commission.

77. A reporting issuer is not required to prepare a press release if senior management has reasonable ground to believe that disclosure would be seriously prejudicial to the interests of the issuer and that no transaction in the securities of the issuer has been carried out on the basis of knowledge of the material change.

Where the circumstances that justify non-disclosure have ceased to exist, the issuer shall immediately comply with section 76.

78. Within 90 days from the end of its financial year, every reporting issuer and every mutual fund constituted under the statutes of Québec shall file with the Commission an annual report including the financial statements, auditor's report and other required information, according to the terms and conditions determined by regulation.

79. Within 45 days from the close of each of the first three quarters of its financial year, every reporting issuer that is not a mutual fund shall file with the Commission a quarterly report including the financial statements and other required information, according to the terms and conditions determined by regulation.

However, in the case of a reporting issuer's first financial year, the Commission determines, after consultation with the issuer, which reports must be filed.

80. Section 79 applies, mutatis mutandis, to a mutual fund that is a reporting issuer and to every mutual fund constituted under the statutes of Québec, except that only the semi-annual report must be filed.

81. Every reporting issuer shall send the reports provided for in sections 78 to 80 to each holder of its securities, other than debt securities, within the times prescribed for filing with the Commission.

82. Upon the application of a reporting issuer, the Commission, on such terms and conditions as it may determine, may exempt a reporting issuer from reporting in its financial statement any information that should normally appear, if the issuer claims it would be seriously prejudicial.

CHAPTER II

PROXY SOLICITATION

83. When the management of a reporting issuer gives notice of a meeting to holders of voting securities, it shall concurrently send a form of proxy prepared in the form prescribed by regulation.

84. Every person who solicits proxies in view of a meeting of holders of voting securities shall send to the persons solicited and to the Commission a circular prepared in the form prescribed by regulation.

This rule also applies to any form of solicitation of security holders to execute, withhold or revoke a proxy and to the sending of forms under section 83.

85. The circular provided for in section 84 is not required for a solicitation made by a person unconnected with the management of the reporting issuer, to not more than 15 security holders, each undivided joint owner being counted as one security holder.

CHAPTER III

INSIDER REPORTS

86. In this chapter, a person who, while neither a senior executive nor performing the functions of a senior executive, is one of the five highest remunerated persons in the undertaking, is deemed to be a senior executive.

87. The insiders of a reporting issuer that are subject to the disclosure requirements established in this chapter are

(1) the issuer itself, its subsidiaries, its senior executives or and the senior executives of its subsidiaries;

(2) any person who exercises control over more than ten per cent of the voting rights attached to the outstanding securities of a reporting issuer, other than securities underwritten during a distribution, and the senior executives of that person.

88. The person who is the owner of securities or has direction over them is the person who controls them.

89. An insider of a reporting issuer who acquires or disposes of a transferable option in respect of a security of that issuer is deemed to effect a change in his control of the security.

90. For the purpose of making the necessary reports, ownership is deemed to pass at the time an offer to buy or sell is accepted.

91. When an issuer, whether or not it is a reporting issuer, becomes an insider of another issuer that is a reporting issuer, a senior executive of the former issuer is deemed to have been a senior executive of the latter for the previous six months or for such shorter period as he has been a senior executive.

If the former issuer is a reporting issuer, the senior executives of the latter issuer are also deemed to be insiders of the former issuer, and the same conditions apply.

92. Section 91 applies to the amalgamation of issuers and to the purchase by an issuer of the whole or a significant part of the assets of another issuer or of a subsidiary thereof.

93. A person who becomes an insider of a reporting issuer that is not a mutual fund shall, within ten days, file a report disclosing his control over the securities of the issuer, in the form prescribed by regulation.

94. An insider of a reporting issuer that is not a mutual fund shall file, within ten days, in the form prescribed by regulation, a report dislosing any change in his control over the securities of the issuer.

95. A senior executive deemed an insider under section 91 or 92 shall, within the first ten days of the following month, file the report that sections 93 and 94 would have required for the period contemplated by the presumption.

96. A person who becomes the owner of securities carrying 20 per cent or more of the voting rights attached to the outstanding voting securities of a reporting issuer shall, within three days, file a report prepared in the form prescribed by regulation.

97. A person who is the owner of securities carrying 20 per cent or more of the voting rights attached to the outstanding securities of a reporting issuer shall, each time he purchases securities assuring him an additional five per cent of the voting rights, file a report as in section 96 within three days.

98. Where the purchase is made as part of a take-over bid or issued bid accompanied with a take-over bid or issuer bid circular provided for in section 108, the report provided for in section 96 or 97 is not required.

99. An insider of a reporting issuer who transfers or causes to be transferred any securities of that issuer to a nominee shall file a report prepared in the form determined by regulation, except in the case of giving collateral for a bona fide debt.

100. Where an insider fails to file a report in respect of securities registered in the name of a third person, the nominee shall file the report himself on becoming aware of the failure.

TITLE VI

TAKE-OVER BIDS AND ISSUER BIDS

CHAPTER I

DEFINITIONS AND SCOPE

101. A take-over bid is an operation by which a person, called the offeror, makes an offer to purchase, as principal, all or part of the securities of an issuer, called the offeree, to the holders of the securities, in view of obtaining or securing a dominant position in the offeree company.

A person is said to have a dominant position when he holds more than twenty per cent of the voting securities of the offeree. The securities held by a person's associate must be included in computing the percentage of the person's holdings.

102. A take-over bid is subject to this Title if it is made to at least one security holder whose address is in Québec according to the records of the offeree.

103. An invitation to make an offer to sell, or the acceptance of such an offer, if done in view of obtaining the result described in section 101, is deemed to be a take-over bid.

104. A take-over bid by way of an exchange of securities, whereby the offeror, to obtain the result described in section 101, offers to holders of the offeree's securities to exchange them for other securities, is subject to the same regulatory system as a take-over bid, mutatis mutandis.

105. Where two or more persons make one or more take-over bids jointly or in concert, or intend to exercise jointly or in concert any voting rights attaching to the security subject to such a bid, each of them is deemed to hold the percentage of the securities held by them in aggregate.

If a take-over bid is made by two or more persons, each is deemed to be an offeror.

106. An offeror who makes a take-over bid is exempt from the requirements of this Part where

(1) the take-over bid is made through the facilities of a stock-exchange recognized by the Commission for the purposes of this section and conforms with the applicable rules;

(2) the bid is not made to security holders generally and envisages the purchase of securities by way of separate agreements with not more than five security holders, with the reservation that where the securities have been acquired within the two preceding years for resale under this exemptions, each seller from whom they were purchased under the bid must be counted as a holder;

(3) the bid involves not more than five per cent of the voting securities, provided that the offeror, his affiliates and his associates do not, within any twelve month period, under the exemptions in paragraphs 1 and 3, purchase more than five per cent of the voting securities of the offeree that are outstanding at the beginning of the period.

CHAPTER II

REQUIRED DOCUMENTS

DIVISION I

SENDING OF TAKE-OVER BID AND CIRCULAR

107. A take-over bid must be sent to every holder of the class or series of securities that is the subject of the bid and of securities convertible into securities of that class or series, whose address in the records of the offeree is in Québec.

In the cases provided for by regulation, the bid must also be sent to every holder whose address in the records of the offeree is in Canada but not in Québec.

108. A take-over bid circular prepared in the form prescribed by regulation must accompany the take-over bid sent to security holders.

The documents referred to in the first paragraph must be filed with the Commission not later than the day they are sent to the security holders.

109. The contents of the documents referred to in section 108 must be approved and the delivery thereof authorized by the offeree in the manner prescribed by regulation.

110. A take-over bid and the related documents mentioned in this Title must be sent by mail, by personal delivery or in any other manner approved by the Commission.

A take-over bid and the related documents have effect from the day they are sent, except in the case provided for in section 120.

DIVISION II

CIRCULARS OF THE BOARD OF DIRECTORS OR OF INDIVIDUAL SENIOR EXECUTIVES

111. The board of directors of an offeree shall cause a circular prepared in the form prescribed by regulation to be sent not later than ten days from the effective date of the take-over bid to every security holder whose address according to its records is in Québec.

The circular may include a substantiated recommendation to the security holders to accept or reject the bid.

112. Where the board of directors of an offeree is considering making a recommendation after the sending of the circular provided for in section 111, it shall mention that fact in the circular; it may then advise the security holders not to tender their securities until further communication is received from the board.

Where the board advises holders to await further communication it must send a communication to them of its recommendation or of its decision not to make a recommendation, at least seven days prior to the expiry of the take-over bid.

113. Any senior executive of an offeree may include with the directors' circular or the communication provided for in section 112 a separate notice prepared in the form prescribed by regulation, in which he may recommend the acceptance or rejection of the take-over bid or indicate his disagreement with the documents prepared by the board.

CHAPTER III

TAKE-OVER BID PROCEDURE

DIVISION I

OBLIGATIONS OF THE OFFEROR

114. An offeror may reserve the right to withdraw a take-over bid only for one of the following reasons:

(1) the minimum number of securities sought in the bid is not tendered;

(2) an undisclosed and material change occurs in respect of a security of the offeree as a result of an action taken by a person other than the offeror;

(3) the required approval of a governmental authority is not obtained prior to the expiry of the bid.

115. Securities purchased by the offeror during a take-over bid but not as a result of the bid are taken into account in determining whether or not the minimum number or securities have been tendered under the bid, except where the number of securities deposited in response to the bid exceeds the number that the offeror is bound or willing to take up.

116. The offeror shall make adequate arrangements to ensure that the required funds are available to effect payment for all securities that are the subject of the take-over bid.

117. The offeror shall not, during a take-over bid, sell any securities of the class or series that is the subject of the take-over bid.

118. The offeror shall offer the same price to all the holders of securities of the class or series that is the subject of the take-over bid. Any other agreement for the object of creating disparity among the holders is prohibited.

119. If, during a take-over bid, an offeror purchases securities for a higher price than that offered in the take-over bid he is bound to increase the latter accordingly.

120. Where a take-over bid has been varied by changing any of its terms or a significant change has occurred during the bid in the information contained in the circular, the offeror must give notice, in the form prescribed by regulation, to those security holders whose securities have not been paid for and to the Commission.

Except where a variation is solely an increase in price, the amended bid has effect from the date of the notice provided for in the first paragraph.

121. Where there is an increase in price, the offeror shall pay the increases price even for securities already paid for.

DIVISION II

TIME LIMITS

122. A take-over bid must have a duration of at least twenty-one days for holders to deposit their securities pursuant to the bid.

123. Securities deposited pursuant to a take-over bid may be withdrawn by giving notice in writing to the depositary, who must receive it within ten days from the date of the bid.

124. Where a take-over bid is subject to approval by a governmental authority, the time within which the offeror must take up and pay for the securities under sections 125 and 127 may be extended for not over 90 days.

125. Where a take-over bid is made for all of a class or series of securities, the offeror shall not, for ten days from the date of the bid, take up and pay for the securities tendered.

At the expiraton of thirty-five days from the date of the bid, the offeror shall take up and pay for the securities tendered or abandon the bid.

126. Where a take-over bid is made for less than all of a class or series of securities, the offeror shall not, for twenty-one days from the date of the bid, take up and pay for the securities tendered.

The duration of the take-over bid must then not exceed thirty-five days.

127. An offeror referred to in section 126 shall, if the terms of the bid not waived by him have been complied with, take up and pay for all the deposited securities within fourteen days after the expiry of the bid.

If the number of securities deposited pursuant to the bid is greater than the offeror is bound or willing to take up, he shall reduce the number of securities deposited by each holder pro rata, disregarding fractions, before taking up and paying for them.

128. The Commission may grant exceptions to the time limits prescribed in this Title in the case of bids subject to different time limits imposed by other Canadian legislative authority.

CHAPTER IV

ISSUER BIDS

129. An isuer bid is a bid made to security holders by an issuer to redeem securities issued by it that represent an interest in its share capital or that are convertible into such securities.

130. Section 103, 105 to 110 and 114 to 128 apply to an issuer bid, mutatis mutandis, if the bid is made to at least one security holder whose address according to the issuer's records is in Québec.

131. Every senior executive of an issuer may include with an issuer bid a notice similar to the notice provided for in section 113.

132. An issuer that makes an issuer bid is exempt from the requirements under this Part where

(1) the securities are redeemed in accordance with the written terms of issue, with the other applicable documents and with the law of the place where the issuer was constituted;

(2) the bid is made through the facilities of a stock exchange recognized by the Commission for the purposes of this section and in accordance with the rules applicable;

(3) the issuer, following the publication of a notice of intention, redeems, over a twelve-month period, less than five per cent of the class or series of securities in question outstanding at the commencement of the period.

TITLE VII

ACTIVITIES OF BROKERS AND ADVISERS

CHAPTER I

REGISTRATION

133. Every person carrying on business as a securities broker or adviser, even in an ancillary manner, must register as such with the Commission.

134. A person distributing securities in respect of which he is not exempt from filing a prospectus is deemed to be carrying on business as a broker if he does not retain the services of a broker.

135. Every natural person carrying on business as a broker or adviser on behalf of a person subject to registration under section 133 must register with the Commission as the representative of that person.

136. The Government shall, by regulation, fix the classes, conditions and duration of registration, and the terms and conditions governing the activities of registrants.

137. Registration is at the discretion of the Commission.

The Commission shall grant registration where, in its opinion,

(1) the applicant meets the requirements fixed by regulation;

(2) the applicant or, in the case of an artificial person, its senior executives have the competence and integrity to establish the viability of the applicant's business operations, and

(3) the applicant has adequate financial resources to meet his commitments in the conduct of his business.

138. The Commission may revoke or suspend the rights granted by registration, or impose restrictions or conditions on their exercise.

139. A broker or adviser wishing to cease carrying on business shall apply to the Commission to surrender his registration.

The Commission may impose such conditions as it may fix on the surrender, and shall accept it where, in its opinion, the interests of clients and investors are sufficiently safeguarded.

CHAPTER II

EXEMPTION FROM REGISTRATION

140. Each of the following is exempt from registering as a broker or the representative of a broker:

(1) the Government of Canada or the government of a Canadian Province;

(2) a bank incorporated under the Bank Act (R.S.C. 1970, c. B-4 and amendments) or the Quebec Savings Bank Act (R.S.C. 1970, c. B-4 and amendments), a savings and credit union governed by the Savings and Credit Unions Act (R.S.Q., chapter C-4) or a trust company registered under the Trust Companies Act (R.S.Q., chapter C-41), to the extent that it merely forwards unsolicited orders to a broker.

141. Each of the following persons is exempt from registering as an adviser or the representative of an adviser, provided he gives advice solely as an ancillary activity and derives no benefit specifically therefrom:

(1) a person practicing the profession of advocate, notary or accountant, or any other profession determined by regulation;

(2) a broker or his representative;

(3) a person who advises the public through the media, provided he does not have securities in the company concerned;

(4) a bank governed by the Bank Act (R.S.C. 1970, chapter B-1 and amendments) or the Québec Savings Banks Act (R.S.C. 1970, chapter B-4 and amendments);

(5) a loan and investment society holding a licence prescribed under the Loan and Investment Societies Act (R.S.Q., chapter S-30);

(6) a savings and credit union governed by the Savings and Credit Unions Act (R.S.Q., chapter C-4);

(7) a trust company registered under the Trust Companies Act (R.S.Q., chapter A-32);

(8) an insurance company holding the licence prescribed under the Act respecting insurance (R.S.Q., chapter A-32).

CHAPTER III

OBLIGATIONS OF REGISTRANTS

142. Every broker or adviser shall keep the books, records and other documents required by regulation.

He shall submit to the Commission the financial statements, the auditor's report, and any other information, in accordance with the regulations.

143. The registrant shall notify the Commission of any change in the information supplied at the time of registration.

In the cases determined by regulation, the notice must be sent ten working days before the change is made; within ten workin days from receipt of the notice, the Commission may reject the change and prescribe what is to be done.

CHAPTER IV

BUSINESS DEALINGS WITH CLIENTS

144. The Government may, by regulation, establish rules governing business dealings between registrants and clients.

145. Before making a recommendation to a client, a registrant must satisfy himself that it corresponds to the client's investment goals and financial position.

146. On carrying out an order, a broker shall immediately send to the person who gave the order a confirmation slip in the form prescribed by regulation.

In addition, he shall send to him a periodic statement of account in the form and at the times prescribed by regulation.

147. A broker proposing to trade in a security for his own account with a person other than a broker must state that fact in every document and communication intended to promote trading in the security.

The statement does not, however, prevent the broker from trading in the security as agent.

148. No broker may vote securities registered in his name but not owned by him.

A broker shall carry out the written instructions of the owner as to the voting of securities or as to the giving of a proxy to vote.

149. A broker in whose name securities referred to in section 148 are registered shall forward to the owner of the securities all the documents received concerning them.

At the request of the broker, the sender of the documents shall immediately and at his own expense send the number of copies required by the broker to discharge his obligation.

150. In every document containing recommendations in respect of securities of a company, the registrant must, in accordance with the regulations, state every interest that he or any of his senior executives has in the securities.

TITLE VIII

SELF-REGULATORY ORGANIZATIONS

CHAPTER I

RECOGNITION

151. To exercise its activities in Québec, a stock exchange, a securities clearing-house or a professional association that regulates trading in securities by its members must register with the Commission as a self-regulatory organization.

152. Registration of self-regulatory organizations is at the discretion of the Commission.

153. The Commission, on such terms and conditions as it may fix, may delegate to a registered organization the application of the whole or a part of Title VII and the regulations thereunder.

154. To be released from delegated duties, an organization must obtain prior approval from the Commission, which may fix such terms and conditions of release as it deems necessary for the protection of members and investors.

155. To register an organization shall file an application with the Commission, together with such documents and information as the Commission may require.

156. The Commission shall publish notice of the application in the Bulletin and invite interested persons to make representations at a public hearing.

157. The Commission shall register to an organization when it is established that

(1) its financial resources and administrative structure are adequate to its objects;

(2) its constating instruments and by-laws are in conformity with sections 158 and 159.

158. The constating instruments or the by-laws of an organization must provide for

(1) unrestricted membership for every person who fulfils the conditions of admission;

(2) equal access to services for every member;

(3) the disciplining of members or their representatives for breach of the by-laws of the organization or contravention of this Act or the regulations.

159. Every provision of the constating instruments or by-laws of a self-regulatory organization that would in effect limit competition must be submitted to the Commission, which shall authorize the provision only to the extent that it considers it necessary in the best interest of investors.

CHAPTER II

SUPERVISORY POWERS OF THE COMMISSION

160. The Commission may order a registered organization to amend its constating instruments or by-laws where that appears necessary to make them conform with this Act or the regulations.

161. Every draft amendment to the constating instruments or by-laws of a registered organization must be submitted to the approval of the Commission.

162. An amendment is deemed approved at the expiry of thirty days or any other period agreed on with the organization concerned, unless the Commission informs it that a public hearing is being called to hear representations on the merits of the proposed amendment.

163. The Commission may at any time suspend the application of a by-law of a registered organization, on such conditions as it sees fit.

164. The Commission may prescribe a course of action to a registered organization if it considers it necessary for the proper operation of the organization.

165. A registered organization shall inform the Commission as soon as possible of every decision rendered under delegated powers concerning the admission of a new member or discipline.

166. Every registered organization shall, within ninety days from the end of its financial year, file an annual report containing the financial statements, auditor's report, and any other information, in accordance with the regulations.

167. The Commission may require a registered organization to keep such books, records an other documents as it may prescribe.

168. A registered organization wishing to cease its activities shall apply to the Commission for authorization.

The Commission shall grant the authorization if it considers that there are adequate safeguards for members and investors.

TITLE IX

SPECIAL PROVISIONS REGARDING INCORPORATED AND NON-INCORPORATED MUTUAL FUNDS

169. Unincorporated mutual funds are subject to the regulatory system established by this Act for mutual funds, mutatis mutandis; in particular, they are deemed to be the issuers of their shares, and the rights and obligations established by this Act devolve upon the persons responsible for their management.

170. This Act applies only to mutual funds that are reporting issuers, except as provided in section 185.

171. A person, called a "management company", that is responsible for providing financial advice and, as the case may be, management services to a mutual fund under the latter's constating instruments or a contract is deemed to be a securities adviser.

A person, called a "distribution company", that is responsible for distributing the shares of a mutual fund to investors under the mutual fund's constating instruments or a contract is deemed to be a broker.

172. For the purposes of this title, the following are related to a mutual fund:

(1) another mutual fund under the same management;

(2) a person to whom the mutual fund is prohibited by sections 173 to 175 from making a loan;

(3) a person from whom the mutual fund is prohibited by sections 174 and 175 from acquiring securities;

(4) an issuer in which the mutual fund holds more than ten per cent of the voting securities;

(5) an issuer in which the fund and related mutual funds hold more than 20 per cent of the voting securities.

173. No mutual fund may, except as an ancillary activity, knowingly make a loan to any of the following persons:

(1) any senior executive of the mutual fund or of its management company or distribution company, or any of his associates;

(2) any person holding over 20 per cent of the voting securities of the mutual fund or of its management company or distribution company, apart from, in the case of a broker, securities he has underwritten and is distributing;

(3) any associate of a person referred to in paragraph 2;

(4) any person in which the mutual fund, alone or together with related mutual funds, holds more than 20 per cent of the voting rights;

(5) any issuer in which more than ten per cent of the outstanding shares are held by a person referred to in paragraph 1 or 2.

174. No mutual fund may knowingly acquire securities issued by a person referred to in paragraph 2, 4 or 5 of section 173.

175. The prohibitions set out in sections 173 and 174 against trading with persons referred to in paragraphs 2 and 4 of section 173 apply in similar circumstances to all the persons, taken as a whole, who are related to the mutual fund.

The prohibitions set out in sections 173 and 174 against trading with persons referred to in paragraph 5 of section 173 apply as in the first paragraph, except that the percentage is increased in this case to 50%.

176. A mutual fund has sixty days from the coming into force of this Act to bring transactions made before then into conformity with sections 173, 174, 175 and 179.

177. Where a person holds or, pursuant to this section, is deemed to hold voting securities of an issuer, he is deemed to be the owner of the same proportion of all the voting securities held or, pursuant to this section, deemed to be held by that issuer.

This section applies to all the persons, taken as a whole, who are related to a mutual *fund*.

178. Notwithstanding section 177, a person holding voting securities issued by a mutual fund or its management company or distribution company is not deemed to be the owner of any securities they may hold.

179. No mutual fund may become surety for a loan or a securities transaction prohibited by sections 173 to 175.

180. No mutual fund may make an acquisition of securities in consequence of which a related person would receive a remuneration, unless the remuneration is provided for in the prospectus prepared for the distribution of the shares of the fund, approved by the Commission.

181. The person responsible, de jure or de facto, for the management of a mutual fund must act in the best interests of the fund, in good faith and with the diligence of a reasonable person.

182. A management company must report each of the following transactions to the Commission within ten days after the end of the month in which it occurs, in the manner prescribed by regulation:

(1) every purchase or sale of securities made between the mutual fund and a related person;

(2) every loan made between the fund and a related person;

(3) every purchase or sale of securities effected by the mutual fund through any related person who receives a remuneration in consequence of the transaction from the fund or the other party;

(4) every transaction effected jointly by the mutual fund and related persons.

183. The Commission may, on application, exempt a person or a mutual fund from the application of section 173, 174, 175, 179, 180 or 182.

184. The Commission may publish in its Bulletin all or part of the information contained in the reports filed under section 182.

185. Sections 148 and 149 apply, mutatis mutandis, to the custodian of the shares of a mutual fund held for the benefit of the shareholders.

186. Sections 172 to 179 apply also to every mutual fund that is incorporated under a Québec statute but is not a reporting issuer.

187. The Commission may regulate the incorporation of mutual funds, and the management, custody and composition of their assets.

TITLE X

PROHIBITIONS AND PENALTIES

CHAPTER I

USE OF PRIVILEGED INFORMATION AND MISCELLANEOUS PROHIBITIONS

188. No person having privileged information on a security of a reporting issuer of which he is an insider may trade in securities of the issuer except in the following cases:

(1) he is justified in believing that the information is generally known or known to the other party;

(2) he avails himself of a plan for the acquisition of securities established before he learned the information.

189. No person referred to in section 188 may disclose information referred to therein except in the following cases:

(1) he is justified in believing that the information is generally known or known to the other party;

(2) he discloses the information in the necessary course of business, having no ground to believe it will be used or disclosed contrary to section 188 or 190 or to this section.

190. The prohibitions set out in sections 188 and 189 also apply to the following persons:

(1) the directors and officers referred to in sections 91 and 92;

(2) companies owned by an affiliate of the reporting issuer;

(3) the management company and the distribution company of a mutual fund, their senior executives and any person who is an insider of one of them under section 87, 91 or 92;

(4) every person who has acquired privileged information in the course of engaging in business or professional activities with the reporting issuer;

(5) every person having privileged information that, as far as he knows, was disclosed by an insider or a person referred to in this section.

191. No person having access to information concerning the investment programme established by a mutual fund or by an adviser who is a portfolio manager may use the information for his own benefit in trading in securities included in the programme.

192. In addition to the adviser, the following persons are deemed to have knowledge of the investment programme of an adviser who is a portfolio manager, if they participate in formulating his investment decisions and his recommendations to the client for whom he manages the portfolio, or learn of them before they are implemented:

(1) every partner of the adviser;

(2) every artificial person that is an affiliate of the adviser;

(3) every senior executive of the adviser or of an artificial person that is an affiliate of the adviser;

(4) every member of the personnel of the adviser or of an artificial person that is an affiliate of the adviser.

193. No person may make any representation that the Commission has passed upon the merits of any security or upon the financial standing, fitness or conduct of any registrant.

194. No person may unduly multiply transactions on behalf of a client solely to increase his remuneration.

195. No person may sell a security short without previously notifying the broker responsible for carrying out the transaction.

CHAPTER II

OFFENCES

196. It is an offence

(1) to contravene a decision of the Commission;

(2) to fail to fulfile an undertaking with the Commission;

(3) to fail to furnish, within the prescribed time, information or a document required by this Act or the regulations;

(4) to fail to appear after summons, to refuse to testify or to refuse to send or hand over any document or thing required by the Commission in the course of an investigation.

197. Every person is guilty of an offence who makes a misrepresentation that is apt to affect the price of a security in any of the following documents:

(1) the permanent information record required under Title III;

(2) the prospectus;

(3) the document referred to in section 223;

(4) the annual, semi-annual or quarterly report required under Title V;

(5) the press release required under Title V;

(6) the circular prepared to solicit proxies under Title V.

198. Every person is guilty of an offence who in any manner not specified in section 197 makes a misrepresentation.

(1) in respect of a transaction in a security;

(2) in the course of soliciting proxies or sending a circular to security holders;

(3) in connection with a take-over bid;

(4) in any document or information filed with the Commission or one of its agents;

(5) in any document forwarded or record kept by any person pursuant to this Act.

199. It is an offence, in effecting a transaction in a security,

(1) to represent that it will be resold or repurchased, except where it carries such a right;

(2) to represent that all or part of the purchase price will be refunded;

(3) to give an undertaking relating to the future value or price of the security, except in a written agreement in respect of a transaction for more than 50 000 dollars;

(4) to declare that the security will be listed on a stock exchange or that an application therefor has been or will be made, except with the explicit authorization of the Commission.

200. Every person who, not being registered as an adviser, gives out information to investors that is apt to influence their investment decisions and derives an advantage therefrom separate from his ordinary remuneration is guilty of an offence.

201. An adviser who is a portfolio manager is guilty of an offense if, in carrying out his mandate, he knowingly participates in any of the following transactions:

(1) the making of a loan to an issuer in which a person referred to in section 192 or an associate of that person is a senior executive, except with the written authorization of the holder given with full knowledge of the facts;

(2) the purchase of securities from an issuer referred to in paragraph 1;

(3) a securities transaction with a person referred to in section 192 or an associate of that person;

(4) the making of a loan to a person referred to in section 192 or an associate of that person.

CHAPTER III

PENAL PROVISIONS

202. Every person who contravenes this Act is guilty of an offence.

Every person guilty of an offence under this Act is liable, in addition to costs, to the following penalties:

(1) in the case of a natural person, a fine of 500 to 10 000 dollars and imprisonment for one month to two years, or only one of these penalties;

(2) in other cases, a fine of 500 to 25 000 dollars.

However, in the case of a natural person, failure to pay the fine and costs entails imprisonment for one month to two years.

203. Every person guilty of an offence under section 197 is liable, in addition to costs, to a fine of 5 000 to 250 000 dollars.

204. Every contravention of a regulation under this Act is subject to the penalties provided in this chapter for offences under this Act.

205. Every senior executive, or employee, including a person remunerated on commission, who authorises or acquiesced in an offence under this Act is liable to the same penalties as the principal offender.

206. In default of payment of the fine and costs by a company found guilty of an offence, the court shall condemn the persons referred to in section 205 jointly and severally to pay the sum, and adjudicate the share of each in the judgment.

On failure to pay, the persons are liable to imprisonment for one month to two years.

207. Every conspiracy to commit an offence under this Act is an offence punishable by the penalties provided in section 202 or 203.

208. Complicity in an offence under this Act and culpable failure to prevent such an offence are punishable by the penalties under section 202 or 203.

209. Proceedings under sections 202 to 208 are brought in accordance with the Summary Convictions Act (R.S.Q., chapter P-15).

210. No proceedings may be brought for an offence under this Act except with the written authorization of the Attorney General or the Commission.

211. A penal action for an offence under this Act is prescribed by two years from the date the Commission or the Attorney General first has knowledge of the facts on which the action is based.

212. The Commission may recover the costs of an investigation from any person found guilty of an offence under this Act or under the securities legislation of another legislative authority.

The Commission shall prepare a bill of the costs and present it to a judge of the Provincial Court after giving the interested parties five days' advance notice of the presentation.

The judge shall tax the costs, and his decision is final.

213. A judge of the Sessions or a judge of the Provincial Court may, upon satisfactory proof of the authenticity of the signature thereon, endorse a warrant of arrest issued by a judge of another province against any person on a charge of contravening the securities legislation of that province.

The warrant so endorsed is sufficient authority to the bearer or any peace officer of Québec to execute it and take the person arrested to the place indicated in the warrant.

TITLE XI

CIVIL ACTIONS

CHAPTER I

TRANSACTIONS EFFECTED WITHOUT A PROSPECTUS OR CIRCULAR

214. Every person who has subscribed or purchased securities in a distribution effected without the prospectus required under Title IV may apply to have the transaction rescinded or the price revised, at his option, without prejudice to his claim for damages.

215. Every person who has sold securities in response to a take-over bid effected without the circular required under Title VI may apply to have the sale rescinded or the price revised, at his option.

216. In addition to his right of action under section 214, the plaintiff may claim damages from the issuer or the holder, as the case may be, whose securities were distributed without a prospectus, from the senior executives of the issuer, or from the senior executives of the broker who effected the distribution.

In addition to his right of action under section 215, the plaintiff may claim damages from the senior executive of the offeror.

217. The defendant in an action under section 216 is responsible for damages unless it is proved that the absence of a prospectus was not imputable to any act on his part.

CHAPTER II

TRANSACTIONS EFFECTED WITH A PROSPECTUS OR CIRCULAR CONTAINING A MISREPRESENTATION

218. A person who has subscribed, purchased or sold securities in a transaction effected with a prospectus or circular containing a misrepresentation may apply to have the contract rescinded or the price revised, without prejudice to his claim for damages.

219. In addition to his right of action under section 218, the plaintiff may claim damages from the persons referred to in section 216, and from an expert whose's opinion containing a misrepresentation appeared, with his knowledge, in the prospectus or circular.

220. A senior executive who is a defendant under section 219 is responsible for damages unless it is proved that he was unable to prevent the distribution referred to in section 218.

221. An expert who is a defendant under section 219 is responsible for damages unless it is proved that the misrepresentation is not imputable to any act on his part.

222. In the case of a short form prospectus, any misrepresentation in the permanent information record also gives rise to a right of action under sections 218 to 231.

223. Any document authorized by the Commission for use in lieu of a prospectus also gives rise to a right of action under sections 218 to 221 if it contains a misrepresentation.

CHAPTER III

USE OF PRIVILEGED INFORMATION

224. Every person who carries out a transaction contrary to section 188, 190 or 191 is responsible for damages to the other party to the transaction.

225. Every person who discloses privileged information in contravention of section 189 or 190 is responsible for damages to a third person as a result of a transaction effected with the person who used the information so disclosed.

226. Every person using privileged information contrary to section 188 or 191 is also accountable for the net profit from the prohibited transaction to the following persons:

(1) the issuer of the securities concerned, in the case of an infringement of section 188;

(2) the mutual fund or the client for whom the portfolio is managed, in the case of an infringement of section 191.

227. The issuer of the securities concerned, the mutual fund or the client for whom the portfolio is managed, as the case may be, may intervene in an action brought under section 226.

228. With the authorization of the court, obtained on a motion served on the issuer or the mutual fund, the rights of action under sections 226 and 227 may be exercised, in the name of and on behalf of the issuer or the fund, by a person who was at the time of the prohibited transaction or is at the time of the motion a holder of outstanding securities of the issuer or the fund.

229. Every security holder who satisfies the conditions set forth in section 228 may also intervene in an action instituted under section 226 or 228.

230. To obtain authorization pursuant to section 228, it must be established that the senior executives of the issuer or of the mutual fund have failed to institute the action, or have failed to prosecute it diligently.

231. The court may make any necessary order to facilitate the exercise of a holder's right to institute or intervene in an action. In particular, it may charge the holder's costs to the issuer.

232. The Commission has an interest to bring an action under section 228 or 229 in the same manner as a holder.

CHAPTER IV

PRESCRIPTION

233. Any right of action for rescission or for revision of the price under this title is prescribed by one year from the date of the transaction.

234. Any right of action for damages under this title is prescribed by two years from knowledge of the facts giving rise to the action, except on proof that tardy knowledge is imputable to the negligence of the plaintiff.

235. The prescriptive periods under section 234 are subordinate to the following periods:

(1) five years from the transaction, in the case of actions under sections 216, 224, 225 and 228;

(2) five years from the filing of the prospectus, short form prospectus or circular with the Commission, in the case of actions under sections 219 to 222.

TITLE XII

ENFORCEMENT

CHAPTER I

POWERS OF INVESTIGATION

236. The Commission or its agent may require any document or information it considers expedient for the discharge of its functions to be submitted to it by any of the following persons:

(1) a registrant;

(2) a self-regulatory organization;

(3) a reporting issuer;

(4) the depositary of the assets of a mutual fund;

(5) a person submitting an application to the Commission, or filing with it documents required by the Act or the regulations, and the issuer mentioned in the application or the documents.

In addition, the Commission or its appointed agent may require the person to verify by affidavit the authenticity or veracity of submitted documents or information.

237. The Commission or its agent may require any person referred to in section 236 or any senior executive or employee thereof to submit to examination under oath.

238. The Commission may order an investigation to aid it in the due administration of the Act or to repress contraventions of the Act or the regulations, or the securities legislation of another legislative authority.

239. The Commission may also make an investigation to collect the appropriate information in view of proposing amendments to this Act and the regulations or preparing policy statements.

240. The first paragraph of section 6, and sections 9, 10, 11, 12, 13 and 16 of the Act respecting public inquiry commissions (R.S.Q., chapter C-37) apply, mutatis mutandis, to investigations under this chapter.

The Commission has, for the purposes of an investigation, all the powers of a judge of the Superior Court.

241. No person called upon to testify in the course of an investigation may refuse to answer or to produce any document on the ground that he might thereby be incriminated or exposed to a penalty or civil proceedings, subject to the Canada Evidence Act (R.S.C., 1970, chapter E-10).

242. The Commission may require the submission or delivery of any document related to the object of the investigation, subject to professional secrecy within the limits admitted by the courts.

243. A person who has remitted documents as in section 242 may inspect them or copy them at his own expense, by arrangement with the Commission.

244. Investigations made under section 238 are held in camera, unless the Commission decides otherwise.

245. Investigations made under section 239 are public, unless the Commission orders in camera proceedings.

246. The Commission may forbid a person to disclose any information relating to an investigation to anyone but his advocate.

247. A person called on to testify at an investigation may be assisted by the advocate of his choice.

248. The Commission may, without relinquishing charge of an investigation, appoint a person to carry it out.

The investigator must prove his appointment on demand.

For the purposes of the investigation, the investigator has all the powers of the Commission, except to cite for contempt of court.

The investigator shall report to the Commission, and place the transcript of testimony and the documents relating to the investigation at its disposal.

CHAPTER II

CONSERVATORY MEASURES

DIVISION I

FREEZE ORDERS

249. The Commission may, in view of or in the course of an investigation,

(1) order the person who is or is about to be under investigation to hold the funds, securities or other assets in his possession;

(2) order the person who is or is about to be under investigation to refrain from withdrawing funds, securities or other assets from any other person having them on deposit, under control or for safekeeping;

(3) order any other person to hold the funds, securities or other assets referred to in paragraph 2.

250. Every order made under section 249 is effective for a renewable period of ninety days from the date the person concerned is notified.

251. If the person named in an order under paragraph 3 of section 249 has leased a safety deposit box to the person under investigation or put it at his disposal, he must immediately notify the Commission.

At the request of the Commission, the person shall open the safety deposit box in the presence of an agent of the Commission, draw up an inventory of the contents in triplicate, and give one copy to the Commission and one copy to the person under investigation.

252. No order made under section 249 applies to funds or securities in a stock exchange clearing house or with a transfer agent, unless it so states.

253. Where an order made under paragraph 3 of section 249 concerns a bank, loan and investment company or trust company, it applies only to the branches or agencies mentioned therein.

254. An order made under section 249 applies also to funds, securities and other assets received after the effective date of the order.

255. Every person directly affected by an order made under section 249, if in doubt as to the application of the order to particular funds, securities or other assets, may apply to the Commission for clarification.

256. The Commission may notify the registry office or the Ministère des richesses naturelles of any order made under section 238 or 249, for registration.

An order registered under this section may be set up against any person whose right is registered subsequently.

DIVISION II

PROVISIONAL ADMINISTRATION AND WINDING-UP

257. The Commission may recommend that the Minister appoint a provisional administrator to administer the property of a person or the affairs of a company in the place of the board of directors in the following cases:

(1) where an investigation is being or is about to be made in respect of the person;

(2) where the senior executives of the person are suspected of malversation, breach of trust or any other offence;

(3) where the senior executives are resorting to management practices that tend to depreciate the securities issued by the person;

(4) where the Commission deems it imperative that the clients of a registrant or the holders of securities be protected.

258. Before appointing a provisional administrator, the Minister shall give the person concerned an opportunity to be heard.

The Minister may, however, if the Commission so recommends, make the order first, provided that the person concerned is given an opportunity to be heard within fifteen days.

259. Subject to the terms of his mandate under the order, the provisional administrator shall take possession of the property belonging to the person named in the order or held by him for any other person.

A provisional administrator is, subject to his mandate, vested with all the necessary powers to manage the affairs of the person concerned and, where there is a board of directors, enjoys all its prerogatives.

260. At the request of the Minister or the Commission, the provisional administrator shall report his findings and the execution of his mandate.

At every request under the first paragraph, the provisional administrator shall submit his report both to the Minister and to the Commission.

261. The Minister may, on the recommendation of the Commission,

(1) rescind or prolong an order;

(2) dismiss a member of the board of directors or declare him disqualified for such office, and provide for his replacement;

(3) order the winding-up of the property of the person concerned and appoint a liquidator;

(4) order the winding-up of the company concerned and appoint a liquidator.

Every order of the Minister for the winding-up of the company concerned has the same effect as an order of a judge of the Superior Court under section 25 of the Winding-Up Act (R.S.Q., chapter L-4).

262. The fees and expenses of the provisional administrator and the liquidator for the execution of their mandates are taken out of the total assets administered, after approval by the Minister.

If the assets are insufficient or in case of insolvency, the fees and expenses are borne by the Government, which is subrogated in the rights of the provisional administrator or the liquidator.

CHAPTER III

OTHER POWERS OF THE COMMISSION

263. The Commission may, on such conditions as it may determine, exempt a person from any or all of the requirements under Titles IV to VIII where it considers the exemption not to be detrimental to the best interests of investors. The decision is without appeal.

264. The Commission may deny the benefit of an exemption contained in this Act to any person.

265. The Commission may order a person to cease any activity in respect of a transaction in securities.

The Commission may also order a person to cease carrying on business as an adviser.

The Commission may, furthermore, order any category of persons to cease any activity in respect of a transaction in a particular security.

266. Every order made under section 265 has effect from the time the person concerned is notified or becomes aware of it.

Publication of the order in the Bulletin or its circulation by any other medium ordinarily available to the person concerned in the practice of his profession is valid as notification under the first paragraph.

267. The Commission may order any person to cease to have dealings with a particular registrant or reporting issuer.

268. The Commission may, by a motion, apply to a judge of the Superior Court for an injunction in respect of any matter relating to this Act or the regulations.

The motion for an injunction is an action.

The procedure prescribed in the Code of Civil Procedure applies, except that the Commission is not required to give security.

269. The Commission may, ex officio and without notice, intervene in any civil action relating to any provision of this Act to participate in the proof and hearing.

270. The Commission may prohibit or place restrictions on canvassing in view of a transaction in a particular security.

271. The Commission may order a registrant to submit any advertising copy to it before using it.

The Commission may prohibit the use of the advertising copy or require it to be changed.

272. The Commission may order a member of a profession to cease to act before it on behalf of a reporting issuer or of a person required to file documents with the Commission, if

(1) he has been sentenced in a penal action or has been disciplined;

(2) he is under investigation by the Commission, or a penal action or a disciplinary procedure is being taken against him.

273. The Commission may reprimand a registrant or a self-regulatory organization.

The Commission must give the person concerned prior opportunity to be heard.

274. The Commission may recommend to the Ministre des Finances that a refund be made of all or part of any fees collected.

TITLE XIII

ADMINISTRATION OF THE ACT

CHAPTER I

THE COMMISSION DES VALEURS MOBILIERES

275. The Commission des valeurs mobilières du Québec established under the Securities Act (R.S.Q., chapter V-1) is continued; the Commission is responsible for the administration of this Act.

The Commission is composed of not over seven members, appointed by the Government for a term not exceeding five years.

The Government shall appoint a chairman and one or two vice-chairmen from among the members.

The office of chairman or vice-chairman is incompatible with the exercise of any other function.

276. The chairman is a chief executive officer of an agency within the meaning of the Civil Service Act (R.S.Q., chapter F-3).

277. The Government shall fix the salary and indemnities of a member of the Commission. The remuneration of the members of the Commission, once fixed, cannot be reduced.

278. If the chairman is unable to act, the Government shall appoint a person to replace him temporarily.

279. A member of the Commission remains in office at the expiry of his term until he is reappointed or replaced, unless the Government decides otherwise.

A member of the Commission who has been replaced continues to have jurisdiction in the cases before him.

280. The Government may dismiss a member of the Commission, where the Court of appeal, after making an inquiry at the request of the Minister, so recommends.

281. The Commission has its head office in the city of Montréal.

282. The Commission may hold sittings anywhere, even outside Québec.

283. Proceedings conducted by the members of the Commission by way of a conference telephone call are valid.

284. Two members are a quorum of the Commission. In case of a tie-vote, the chairman has a casting vote.

285. In case of a tri-vote in the absence of the chairman, the matter is referred to him.

286. The Commission may appoint any expert whose assistance it deems expedient for the execution of its mandate.

287. The minutes of the sittings of the Commission and documents emanating from the Commission or included in its records are authentic if signed by the Secretary-General or a member of the Commission.

288. The Secretary-General, where authorized by the Commission, shall sign the documents emanating from the Commission.

Documents intended for the Commission are served on the Secretary-General.

289. Any statement issued by the Commission respecting the registration of a person, the filing of a document, the date that the facts upon which proceedings may be brought came to the knowledge of the Commission and any other matter pertaining to the administration of this act is proof of its content in any civil or penal proceedings without other proof of the signature or office of the person certifying.

290. All documents required to be filed under this Act or the regulations are open to public inspection at the head office of the Commission; they may also be reproduced or circulated in whole or in part.

However, the Commission may, if it deems it advisable, hold certain documents to be confidential.

291. The Commission must publish a bulletin periodically to inform financial circles of its activities; in particular, applications received, decisions rendered and information filed may be published.

292. The Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10) is applicable to the full-time members of the Commission appointed after the coming into force of this section, if they so elect.

293. The personnel of the Commission is appointed and remunerated in accordance with the Civil Service Act (R.S.Q., 1978, chapter 15).

294. The Government shall, by regulation, adopt a code of ethics applicable to members of the Commission and its personnel.

295. Every year, before the end of September, the Commission shall remit to the Minister a report of its activities for the preceding fiscal year.

The Minister shall table the report before the National Assembly within thirty days if it is sitting, or otherwise, within 30 days from the opening of the next session of resumption.

CHAPTER II

DELEGATION OF POWERS

296. The Government or a minister designated by it may enter into an agreement with another government for the delegation of powers conferred on the Commission by this Act or conferred on a similar body by an Act of another legislative authority.

297. The Commission may, subject to section 298, delegate to one of its members or a member of its personnel any power resulting from this act or an agreement referred to in section 296.

Every decision to delegate power must be published in the Gazette officielle du Québec.

298. The Commission has sole authority to review its decisions, order an investigation, make a freeze order under Title XII or recommend to the Minister the appointment of a provisional administrator, the liquidation of the property of a person or the liquidation of a company.

CHAPTER III

Control Exercised by the Commission

299. The Commission may call before it any matter that is before a person exercising a delegated power and decide it in his stead.

300. The Commission may, ex officio, review any decision rendered by a person exercising a delegated power or by a self-regulatory organization.

The self-regulatory organization is entitled to be heard at the times prescribed under sections 309 and 310.

301. Any person hearing a matter pursuant to a delegation of power may refer it to the Commission.

CHAPTER IV

HEARINGS

302. The Commission may hold hearings in conjunction with and consult with any other authority empowered to supervise trading in securities.

303. The Commission shall determine the rules of procedure applicable to its hearings.

304. Sections 240 to 247 apply to any hearing of the Commission, *mutatis mutandis*.

305. Any person appearing before the Commission may request that the testimony be recorded, at his own expense. The person is then required, at the request of the Commission, to provide it with a copy of the transcript, at the latter's expense.

CHAPTER V

DECISIONS

306. The Commission shall exercise the discretion conferred on it in accordance with the public interest.

307. The Commission may review its decisions at any time.

A person having rendered a decision under delegated powers may review it if justified by a new fact.

308. A person directly affected by a decision rendered under delegated powers or by a self-regulatory organization may within thirty days apply for a review of the decision by the Commission.

309. The Commission or a person exercising delegated powers, before rendering a decision that adversely affects the rights of a person, must give the person an opportunity to be heard.

310. However, a decision adversely affecting the rights of a person may for an imperative cause be rendered without a prior hearing.

In such a case, the person rendering the decision must give the person concerned the opportunity to be heard within 15 days.

311. The application for review does not suspend the execution of the decision contested, unless the Commission decides otherwise.

CHAPTER VI

APPEALS

312. Any person directly affected by a decision of the Commission may, if the testimony has been recorded, appeal therefrom to three judges of the Provincial Court on any question of jurisdiction or law.

313. The appeal is made by filing a notice to that effect with the Secretary-General of the Commission within 30 days from the date of the decision appealed from.

Filing of the notice is in lieu of service on the Commission.

314. The Secretary-General shall immediately send the notice to the office of the Provincial Court at Montréal or Québec, at the option of the appellant.

The Secretary-General shall send to the office, in four copies, in lieu of the joint record, the decision appealed from, the transcript of the recording and every other pertinent document.

315. The appeal is governed by articles 491 to 524 of the Code of Civil Procedure, mutatis mutandis. However, the parties are required to file only four copies of the factum of their pretensions.

316. The rules of practive of the Court of appeal in civil matters also apply, except that the Secretary-General of the Commission is substituted for the prothonotary of the Superior Court.

317. An appeal does not suspend the execution of the decision appealed from, unless the Commission or a judge of the Provincial Court decides otherwise.

CHAPTER VII

PROHIBITED RECOURSES AND IMMUNITY

318. No extraordinary recourse provided for in articles 834 to 850 of the Code of Civil Procedure may be exercised nor any injunction granted against the Commission or its members or agents acting in their official capacity.

319. Article 33 of the Code of Civil Procedure does not apply to the Commission nor to the persons contemplated in section 318.

320. A judge of the Court of Appeal, upon motion, may annul summarily any decision rendered contrary to section 318 or 319.

321. Neither members of the Commission nor its agents may be prosecuted for official acts done in good faith in the exercise of their functions.

TITLE XIV

REGULATIONS, TRANSITIONAL AND FINAL PROVISIONS

CHAPTER I

REGULATIONS

322. In addition to the regulatory powers provided elsewhere in this Act, the Government may, by regulation,

(1) prescribe the form and content of the documents and information required to be furnished under this Act or the regulations to the Commission, to security holders or to the market, and the terms and conditions of their communication;

(2) prescribe that complementary documents and information not specifically provided for by the Act be furnished to any person;

(3) establish rules respecting the furnishing of information to the public or to the Commission relating to securities or trades in securities;

(4) regulate the listing of securities and the trading of securities on a stock exchange or otherwise, and fix the form and content of the required documents;

(5) define requirements governing the keeping of accounts and records of issuers and the preparation and audit of their financial statements;

(6) permit the replacement of certain documents required under this Act by documents required under an Act of another legislative authority, provided that they contain equivalent information;

(7) give to the rules or standards established by a self-regulatory or a professional organization the force of a regulation made under this act or impose penalties for infringements of those rules or standards;

(8) exempt a category of persons, securities or transactions from all or part of the requirements under this Act or the regulations;

(9) prescribe the procedure applicable to any matter respecting the applicable of this Act;

(10) establish commissions and other sales charges pertaining to a contractual plan for the acquisition of securities;

(11) establish the requirements of a registrant or a self-regulatory organization following a transaction in counterfeit, lost or stolen securities;

(12) prohibit or subordinate to certain conditions any activity designed to fix or stabilize the price of a security;

(13) determine the conditions on which a person residing outside Québec may apply for registration or hold an interest in the capital of a registrant;

(14) determine, where necessary, which person is to be considered the issuer;

(15) prescribe the fees exigible for any formality provided for by the Act or regulations and the terms and conditions of payment.

323. In exercising its regulatory powers, the Government may establish various categories of persons, securities and transactions and prescribe the rules applicable to each category.

324. The Government may, by an express provision in a regulation, grant a discretionary power to the Commission.

325. The regulatory powers defined in this Act include that of adopting any accessory provision not specifically mentioned therein, in order to ensure their full effect.

326. No draft regulation may be adopted except on prior notice of 30 days published in the Gazette officielle du Québec, setting forth the text of the draft.

A regulation comes into force on the day of publication in the Gazette officielle du Québec of a notice of its approval by the Government or, where amended by the latter, of its final text.

CHAPTER II

TRANSITIONAL AND FINAL PROVISIONS

327. This act replaces the Securities Act (R.S.Q., chapter V-1) and the Act to amend the Securities Act in its applicability to the contract of concession or of franchising (S.Q., 1979, chapter 79).

328. Division VII of the Licenses Act (R.S.Q., chapter L-3) is repealed.

329. The words, "with the authorization of the Commission des valeurs mobilières du Québec", in paragraph l of section 19 of the Cooperative Associations Act (R.S.Q., chapter A-24) are struck out.

330. The words "with the authorization of the Commission des valeurs mobilières du Québec" in paragraph K of section 9 of the Act respecting cooperative agricultural associations (R.S.Q., chapter S-24) are struck out.

331. The following amendments are made to the Companies Information Act (R.S.Q., chapter R-22):

(1) paragraph c of section 1 is struck out;

(2) in paragraph b of subsection 1 of section 2, the words: "or upon the sale therein of any of its securities," are struck out;

(3) paragraph d of subsection 1 of section 2 is struck out;

(4) in subsection 2 of section 2, the reference ", c or d" in the third line is replaced by "or c";

(5) subsection 3 of section 2 is amended by replacing the text following the words "insurance company", in the second and third lines, by a period.

332. The following amendments are made to the Taxation Act (S.Q. 1972, chapter 23), amended by the Act respecting stock savings plans and to again amend the Taxation Act and to amend the Securities Act (S.Q. 1979, chapter 14):

(1) in the first paragraph of section 697a, the words "a broker within the meaning of the Securities Act (Revised Statutes, 1964, chapter 274) having an establishment in Québec and registered" are replaced by "a broker within the meaning of section 133 of the Securities Act (insert here the chapter number in the annual volume of the statutes) having an establishment in Québec and registered";

(2) in the French text of paragraph e of section 697b, the words "la date du prospectus ou de la circulaire relative" in the first and second lines are replaced by: "la date de la note d'information ou de la circulaire relative", and the words "dans ce prospectus" in the seventh line by: "dans cette note d'information";

(3) paragraph f of section 697b is replaced by: "purchased within the framework of a distribution of such a share or of a right to subscribe for such a share made in accordance with a receipt of the Commission des valeurs mobilières, a prospectus exemption provided for in section 61, 63 or 263 or an authorization of the Régie de l'électricité et du gaz granted after 27 March 1979 and before 22 June 1979;";

(4) the words "of the Securities Act" in the third and fourth lines of paragraph g of section 697b are replaced by "of section 133 of the Securities Act";

(5) in paragraph a of section 697c, the text following the word "meaning" in the second line is replaced by "of section 87 of the Securities Act;";

(6) paragraph b of section 697c is replaced by: "(b) having as of 6 July 1973, common voting shares that were listed on the stock exchange in Québec, were the object of a distribution in conditions provided for in paragraphs 1 and 3 of section 12 of the Securities Act, or were distributed in accordance with an authorization granted, before 22 June 1979, by the Régie de l'électricité et du gaz; and";

(7) in the French text, the words "du prospectus ou de la circulaire visé" in the fourth and fifth lines of paragraph c of section 697c are replaced by "de la note d'information ou de la circulaire visée";

(8) the words "of the Securities Act" in the third and fourth lines of paragraph f of section 697f are replaced by "of section 133 of the Securities Act";

(9) in the French text, the words "le prospectus ou la circulaire visé" in the fifth and sixth lines of the second paragraph of section 697j are replaced by "la note d'information ou la circulaire visée";

(10) in the French text, the words "un prospectus ou une circulaire visé" in the first line of section 773a are replaced by "une note d'information ou une circulaire visée".

333. Every registration made and permission granted to distribute securities or a prospectus under the Securities Act (R.S.Q. 1977, chapter V-1) continues to have full effect notwithstanding the replacement of that Act by this Act.

The first paragraph also applies to other decisions rendered under the said Act that have the effect of granting rights or imposing obligations.

334. A person who is already an insider upon the coming into force of section 93 must also file the statement contemplated therein within the prescribed time.

335. The minister appointed by the Government is responsible for the application of this Act.

336. This Act comes into force on the date or dates to be fixed by government proclamation.

DRAFT OF A NEW SECURITIES ACT

INTRODUCTORY STATEMENT

I- Background

The full development of human and natural resources and the healthy expansion of all sectors of economic activity obviously depend, in Québec as in any market economy, on a policy that favours access to capital.

Considering the major role played by securities in the capital market, and the importance of investment capital as a source of funds for business enterprise, it is apparent that any policy favouring access to such capital must ensure that the limited resources available are allocated to those enterprises most likely to make efficent use of them. This entails standard requirements of disclosure to investors, and reliance on the efficient and fair operation of a secondary market where securities may be freely traded. At the same time, to command public confidence, such a policy must ensure that the investor is adequately protected.

This draft bill submitted by the Commission des valeurs mobilières du Québec is designed, therefore, to ensure that Québec will continue to administer such a policy in the field of securities.

II- Existing Legislation

Present securities legislation in Québec remains essentially unchanged from the original Act (S.Q., 1954-1955, chapter 11), which was rather closely modeled on the Ontario legislation; little consideration was given to adapting securities regulation to the peculiar situation of Québec.

The existing Act is now outdated. Although amendments have been made to it from time to time in the past twenty-five years to keep up with the most striking developments in the market, these have been attempts to solve specific problems, and have only made its structural faults more glaring. Meanwhile, securities legislation in Canada has been undergoing considerable development. In 1978, Ontario revised its existing Act; in 1979, the federal government published its Proposals for a Securities Market Law for Canada, and several provinces are currently revising their legislation.

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The amendments that have been made, the most considerable dating from 1973, have not kept the Québec legislation in line with the developments. The Act must be revised, therefore, to bring it up to date. Furthermore, Québec must occupy the whole field of its jurisdiction before the federal government acts on its own draft bill. Finally, legislative language has become much more demanding. The terminology used in the Act and the regulations must be improved.

III- Preparation of the draft

The preparation of the draft bill began with a study of the general body of present securities legislation in Québec, Ontario and the United States, and the federal draft bill. Next, the rules decided on were organized around a few fundamental principles, so as to provide an uncluttered and easily understandable system of securities regulation. It was necessary, in carrying out this stage of the work, to re-think the manner in which the rules are divided between the Act and the regulations, so that all those requirements that were considered essential would be included in the Act.

Throughout the entire course of this work, the Commission has referred to the texts of law adopted by the other legislative authorities in Canada, in order to ensure that the Québec legislation would be consonant with that of the other provinces. It has also consulted the other securities commissions in Canada to take advantage of their experience.

IV- Characteristics of the Bill

The entire Bill is built around three central ideas: disclosure to the public and to security-holders, regulation of the activities of persons carrying on the securities business, and protection of the investor.

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A- Disclosure to the public and to security holders

Sound investment decisions cannot be made nor, indeed, can the money market run smoothly without full and reliable information. As a general rule, therefore, financial disclosure must take precedence over business secrets.

Disclosure is required, firstly, at the time of a distribution. Unless an exemption is provided for in the Act or granted by the Commission, the distribution of securities requires that a prospectus, providing the essential information on the issuer's business and on the security offered, be first made available to the public.

The requirements are simpler where a company makes distributions on a fairly regular basis. If the company has prepared a financial disclosure record and filed it with the Commission, a short form prospectus is considered sufficient.

Information must also be provided to the public and to security holders on a permanent basis by means of annual and quarterly reports. A person soliciting proxies from security holders must send an explanatory circular to each holder of voting securities.

In addition to permanent disclosure, continuous disclosure is also required of the issuer, to keep the public up to date on material changes likely to affect trading in the issuer's shares.

Finally, a take-over bid circular is required at the time of a take-ove bid, a take-over bid by way of an exchange of securities or an issuer bid. Security holders need this information if they are to make enlightened decisions; secrecy is permitted only when it is truly essential, never for the sole purpose of reaping higher profits.

The bill provides not only for the preparation of all the documents relative to disclosure, their filing with the Commission and their availability to the public, but also for their distribution by whatever means will render them most accessible.

B- Regulation of Activities of Professionals

Under the existing Act, all persons who transact in securities are obliged to register with the Commission, an unnecessarily arduous procedure. Under the draft bill, only the person carrying on business as a broker or adviser is required to register. This obviates the nexessity of defining precise limits to the notion of "trading in securities". The issuer is exempt from registration if he distributes his securities through a broker.

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In addition, the bill provides for the registration of self-regulatory organizations and the delegation to them of certain supervisory powers. This is being done to place greater responsibility for the running of the market and the activities of the members of these organizations in the hands of professionals. However, the Commission retains its right of inspection over them, as it has a duty to ensure both freedom of competition and equal opportunity for all their members.

C- Protection of Investors

Investors will invest in securities only if they have confidence in the market. The dissemination of information and the regulation of the activities of persons carrying on business in the field contribute to the establishment of a climate of confidence. It is also necessary to guard against investors' being duped, or even unpleasantly surprised.

Insiders have well-defined disclosure obligations. Making use of privileged information is strictly forbidden. Persons who have access to information that is not yet common knowledge are not allowed to take advantage of the security holders' ignorance.

The object of the penal provisions is to curb dishonest and unfair practices and to regain the confidence of investors by means of the sanctions prescribed. The Commission has wide powers of investigation and may also order conservatory measures required in the course of an investigation.

The suppression of infractions is not in itself sufficient to protect investors against losses incurred because of dishonest or unfair practices. The bill establishes several rights of action for this eventuality, which, by transferring the burden of proof, can help the victim to obtain restitution. These recourses under contractual and delictual responsiblity supplement recourses under the ordinary law. Senior executives of the companies implicated are also liable to criminal proceedings.

Lastly, the draft bill establishes the subscriber's or purchaser's right to rescind, within two days, a transaction made in a distribution and rules that a broker's recommendations to his clients must always correspond to the latters' investment goals.

14 May 1980

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